In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-556

SID HARVEY, INC. AND SID HARVEY BROOKLYN CORP., PETITIONERS

v.

LOCAL 810, STEEL, METALS, ALLOYS & HARDWARE FABRICATORS & WAREHOUSEMEN, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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1. In furtherance of a labor dispute with Sid Harvey Supply (Supply), Local 810 (the Union) picketed the premises of Sid Harvey, Inc. (Inc.) and Sid Harvey Brooklyn, Suffolk, and Nassau (Pet. App. 17a, 22a-23a). The Board held that the Union had engaged in secondary picketing in violation of Section

8(b)(4)(B) of the National Labor Relations Act, 29 U.S.C. 158(b)(4)(B), because "despite the cooperation and mutual assistance among the various corporations * * *, there is not that appreciable degree of integration of management and day-to-day operations between Supply, the primary employer, and the others, as to make them allies and deprive Inc., Brooklyn, Nassau and Suffolk of the protection of Section 8(b)(4) of the Act" (Pet. App. 14a).[1] The Board entered an appropriate remedial order (Pet. App. 18a-19a, 23a).

The court of appeals declined to enforce the Board's order, finding that the "Sid Harvey organization is essentially an integrated complex which manufactures, distributes, and sells a limited number of products,"

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[1] Inc., which is wholly owned by Stephen Harvey, is engaged in the business of rebuilding and reconditioning parts and equipment used in heating and air conditioning systems (Pet. App. 6a). Supply, the stock of which is owned by 14 Sid Harvey sales companies, including the three here (Brooklyn, Nassau, and Suffolk), warehouses and distributes all of Inc's rebuilt products, as well as new parts purchased from major manufacturers. Supply's only customers are the Sid Harvey sales companies. The bulk of the products sold by the sales companies is obtained from Supply. (Pet. App. 6a-8a.) Stephen Harvey owns all of the voting stock of Inc. and a majority of the voting stock of 9 of the 14 sales companies (including Brooklyn and Nassau), which own Supply. He is Chairman of the Board and an officer of each of these sales companies and of Supply. (Pet. App. 8a.) However, he is not involved in the day-to-day management or labor relations of any of the companies, other than Inc., and his authority is limited to hiring and firing the top executives of the companies. The top executives manage each company and handle its personnel and labor relations problems. (Pet. App. 6a-7a, 13a.)

that "[o]wnership and control of the five corporations is centralized or overlapping," and the "daily contact among the corporations is extensive," and that "the operation and success of each is interrelated with and heavily dependent upon the other members of the group performing their assigned tasks." The court concluded that, in these circumstances, the picketed companies could not be characterized as "neutral" for purposes of Section 8(b)(4) of the Act. (Pet. App. 37a).

2. While the Board believes that the court of appeals should have enforced its order, it did not petition for certiorari because, in its view, the Board and the court essentially differed only in their evaluation of the facts of this particular case. Petitioners (Sid Harvey, Inc. and Sid Harvey Brooklyn), the charging parties before the Board, contend that a difference in legal principle is involved because, "in the absence of common active control over labor management policies, the fact that commonly owned companies are functionally integrated" does not warrant "a finding that they constitute a 'single employer' for purposes of Section 8(b)(4)" (Pet. 2). The Board has held, however, that where employers "are engaged in an integrated, straight line operation"—as the court below viewed the situation here—they cannot be considered separate entities for purposes of that Section even though "their managers have complete authority in determining labor policies and running day-to-day operations." *Local No. 235, Lithographers (Henry Wurst, Inc.)*, 187 NLRB No.

63, 76 LRRM 1083, 1085; see also *National Union of Marine Cooks and Stewards (Irwin-Lyons Lumber Co.)*, 87 NLRB 54, 56.

In addition, the Board disagrees with petitioners (Pet. 5-8), that there is a conflict among the courts of appeals. In *J. G. Roy & Sons Co.* v. *National Labor Relations Board*, 251 F. 2d 771, 773 (C.A. 1), the court distinguished the situation there from one where the "secondary employer's operations were an absolutely essential and integral part of the primary employer's enterprise." In *Bachman Machine Co.* v. *National Labor Relations Board*, 266 F. 2d 599 (C.A. 8), each company was "engaged in a different, separate and nonintegrated business" (*id.* at 602), and the court noted that a different problem would be presented "if the two companies were engaged in an integrated operation, as in the Irwin-Lyons Lumber Company case * * *" (*id.* at 605). In *Sheet Metal Workers Local 223* v. *Atlas Sheet Metal Co.*, 384 F. 2d 101, 105 (C.A. 5), the two corporations made different products, had only one customer in common, and their business dealings with each other were minimal. And *Los Angeles Newspaper Guild* v. *National Labor Relations Board*, 443 F. 2d 1173 (C.A. 9), and *Television and Radio Artists* v. *National Labor Relations Board*, 80 LRRM 2001 (C.A. D.C.), involved autonomous units of corporate conglomerates, rather than "vertically integrated operations" (Pet. 7; and see Pet. App. 39a).

We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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